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## (2012) 10 CAL CK 0013 Calcutta High Court

Case No: C.R.A. No. 649 of 2005

Chhotu Hazra APPELLANT

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The State of West Bengal RESPONDENT

Date of Decision: Oct. 16, 2012

## **Acts Referred:**

• Criminal Procedure Code, 1973 (CrPC) - Section 313

Penal Code, 1860 (IPC) - Section 306, 34, 498A

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: Nirmal De, for the Appellant; S. Sanyal and Mr. Soumik Ganguly for the State,

for the Respondent

Final Decision: Allowed

## **Judgement**

## Raghunath Bhattacharya, J.

This appeal is directed against the judgment and order of conviction passed by Sri U.C. Nag, Additional Sessions Judge, 5th Court, Paschim Midnapore on 29.06.2005 thereby convicting the accused Nilu Hazra to suffer one year and fine of Rs. 500/- in default further R.I. for three months for commission of offence u/s 498A/34 I.P.C. and accused convicted Chhotu Hazra is hereby sentenced to suffer R.I. for five years and fine of Rs. 1000/- in default of payment to suffer further R.I. for one year for the charge u/s 306 I.P.C. He is also sentenced to suffer for one year and with find of Rs. 500/- in default of payment to suffer further R.I. for three months for the charge u/s 498A/34 I.P.C. Shortly put, the prosecution case is that Sankari Dolai, niece of defacto complainant Kalipada Dolai was married to accused Chhotu Hazra on 29th Asar 1411 B.S. according to Hindu rites and customs. During marriage sufficient dowry was given to Sankari but she was subjected to physical and mental torture in the house of her in-laws as Shankari was a fatty woman with black complexion and was not like of her husband Chhotu and also a written complaint was lodged to the Ghatal P.S. case was instituted u/s 498A/306/34 I.P.C. Hence the prosecution case.

The defence case as it appears from the trend of the cross-examination of the prosecution witnesses and answer given by the accused person to their respective examination u/s 313 Cr.P.C. is that of absolute innocence.

2. In order to bring home the charge from the side of the prosecution as many as eighteen witnesses are examined. P.W. 1 is a defacto complainant of this case. P.W. 2 Panchanan Dalui was a relation of the victim Sankari, P.W. 3 Banshi Dalui is the near relation of the victim Sankari. P.W. 4 Rabindra Hazra is a relation of the accused. P.W. 5 Haru Rana is a local witness and he was acted as a barbar in the marriage ceremony of Sankari and Chhotu and he is almost a formal witness. P.W. 6 Sandhya Dalui is also near relation to the victim. P.W. 7 Sumitra Dalui is also near relation of the victim. P.W. 8 Tapan Chakraborty is a local witness and was a priest who perform the marriage between Sankari and Chhotu and he was a formal witness and it is needless to discuss the evidence in details P.W. 9 Kumari Padma Dalui happens to be a relation of victim. P.W. 10 Sankar Hazra is a near relation of accused. P.W. 11 Shyamapada Hazra is also a distant relation of accused Chhotu. P.W. 12 A.K. Chakraborty is an Executive Magistrate who perform the inquest on the deadbody of Shankari and he found some marks on the body of Shankari. P.W. 13 P.K. Ghosh is a medical officer who perform the P.M. examination on the dead body of Sankari and he found a ligature mark on the neck of the victim. P.W. 14 Sk. Khalil Ali, a constable of Ghatal P.S. who took the dead body to the autopsy surgeon for holding P.M. Examination and is a formal witness. P.W. 15 Hare Krishna Majhi drafted the petition of complaint as per the dictation of Kalipada Dalui and he is a law clerk and a formal witness. P.W. 16 Dipali Hazra is the Pradhan of Sultanpur Gram Panchayat. He has no personal knowledge about the occurrence he learnt from some persons that Sankari committed suicide and as a Pradhan she reported the matter to the O.C. of Ghatal Police Station. P.W. 17 Jayanta Chakraborty is the S.I. of Police and posted as O.C. of Ghatal P.S. at the relevant time. He started the U.D. Case on 13.09.2004 for the unnatural death of Sankari as O.C. and thereafter on receipt of the specific complaint against Chhotu Hazra he started the Ghatal P.S. Case No. 93 of 2004 u/s 498A/306/34 I.P.C. and P.W. 18 is I.O. of this case.

3. I have already stated the prosecution case in broad outlines. P.W. 1 Kalipada Dalui, informant, P.W. 2 Panchanan Dalui, P.W. 3 Banshi Dalui, P.W. 6 Sandhya Dalui, P.W. 7 Sumitra Dalui, P.W. 8 Padma Dalui are the near relation of the victim. In addition to this P.W. 4 Rabindra Hazra is also a near relation of the deceased and on going through the evidence and the prosecution has put its strong reliance on their testimony. According to their evidences I have not going to discuss their evidences separately but conjointly they have stated that Sandhya is a fatty woman with black complexion and Chhotu is used to call her as Kala Hati and which is really humiliating call from a husband to his wife. Moreover, Sankari, the victim was subjected to physical and mental torture by her husband. The petition of complaint was drafted by P.W. 15 as per the dictation of Kalipada. P.W. 1 and he not only prove the signature of Kalipada but also the petition of complaint. So, it is hardly to

disbelieve that petition of complaint was not drafted as per the dictation of Kalipada. Regarding the demand of dowry I like to mention that P.W. 1, the near relation of the deceased stated that accused paid Rs. 10,000/- out of Rs. 13,000/- and some gold ornaments, utensils etc to Sankari at the time of marriage. This part of evidence more or less remain unshaken during the course of the cross-examination. So, it can be safely concluded that this is a case of dowry death. It is not disputed that the deceased Sankari was a fatty woman with black complexion and whereas for the said reason accused Chhotu could not accept her as his wife wholeheartedly and used to taunt her as Kala Hati. This is nothing but a mental torture upon a married lady. It is argued that Sankari was subjected to physical torture and same was reflected from the ocular version of P.W. s and according to P.W. 3 once she met Sankari in a public booth of the bazar and after discussion between them and at that time Sankari informed that Chhotu used to torture her and she was uttered that there was no peace in her matrimonial home. Now it is the specific case of the prosecution that the accused acted as abettor in the commission of suicide by Sankari but it is more or less apparent from the conduct of the accused i.e. behaviour after the death of his wife is guite unnatural one. He did not call the neighboring people or lodged complain to the local P.S. or hospital or informed the police. Though learned Trial Court opined that Chhotu did not express his pain and grief to anybody, yet his conduct indicated that he was not affected on account of death of Sankari. But I am not in agreement with the finding of learned Trial Court as it is the mental condition which varies from man to man, woman to woman etc. It is hardly to disbelieve that when Sankari committed suicide then he and Chhotu was in her home and so, it is hardly to disbelieve that Chhotu did not know anything. From the evidence I find that Sankari lived happily in her matrimonial home about two to three months after her marriage. Since then she was subjected to physical and mental torture mainly by his husband but so far the physical and mental torture by her mother-in-law is not so visible. On the other hand most of the witnesses has deposed against the husband Chhotu but not against her mother.

- 4. In view of the aforesaid discussion the appeal is allowed in part. The order of conviction of Smt. Nilu Hazra is hereby set aside whereas the order of conviction passed against Chhotu is hereby confirmed.
- 5. At the time of argument it was pointed out by the learned Lawyer for the prosecution that accused Chhotu is in jail and he has already served the sentences awarded by the Trial Court but there is no document to that effect if that be so the learned C.J.M. is hereby directed to call for a report from the correctional home and pass necessary order in accordance with law.
- 6. This appeal is allowed in part. The order of conviction of Smt. Nilu Hazra is hereby set aside whereas the order of conviction of Chhotu is hereby confirmed.
- 7. Let copy of this judgment along with Lower Court Record be sent down to the Court below at once. Urgent photostat certified copy, if applied for, be handed over

